

## **XVII. Plan Enforcement**

The Oil Spill Prevention and Response Act (Act) provides for the Harbor Safety Committee to suggest mechanisms to ensure that the provisions of the Harbor Safety Plan be fully, uniformly and regularly enforced. Traditionally, the U.S. Coast Guard has been responsible for the regulation of vessel movements and inspections through the authority vested with the Captain of the Port. Within the geographic boundaries of the Harbor Safety Plan, almost all oil terminals are privately operated and outside of the jurisdiction of local port authorities. The USCG also has been the mainstay of enforcement within the plan boundaries, and it is expected that it will continue in this role.

Under the Act, the State Lands Commission and the California Department of Fish and Game are granted dramatically increased roles and enforcement responsibilities. The State Lands Commission inspects facilities and vessels that are moored alongside the above-mentioned privately operated terminals, and monitors the cargo transfer operations. In the event of a violation, the appropriate state or federal agency is notified. The Department of Fish and Game enforces state regulations under the Act and monitors vessel bunkering operations along with the Coast Guard, and has the power to impose criminal and civil penalties for violations.

Tug Escorts are monitored by the Clearing House (CH), which was established to monitor the tug escort program for the Department of Fish and Game. The Marine Exchange of the San Francisco Bay Region administers the CH. The CH will confirm that all applicable tankers are escorted by an appropriate tug, and that the escort tug is on station prior to the movement of the vessel. In the event that the tug is not on station, the CH contacts the pilot, the master of the vessel, and the shipping company and/or agent and advises them accordingly. The vessel may not proceed until the escort tug is on station. The CH notifies the Department of Fish and Game of suspected violations. In the event that the tug breaks down during an escort, the master and the pilot will determine the safest course of action: whether to stop, to return to dock or to proceed.

Review and update of the Harbor Safety Plan is mandated to take place annually on or before June 30th. At that time, all aspects of the Harbor Safety Plan are assessed and the findings and recommendations for improvements are sent to the Administrator.

### **2004 Tug Escort Violations**

After a four-year lull, 2004 saw a marked increase in violations of tug escort regulations within San Francisco Bay, San Pablo Bay and Suisun Bay. In 2004, the CH contacted the Office of Spill Prevention and Response (OSPR) 23 times in regard to possible violations. Of these, three notifications involved confusion over the alternate compliance status of one tanker operator and were ruled invalid by OSPR. The 20 remaining incidents were determined by OSPR to be infractions.

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The majority of the infractions (13) involved tank barge movements in which the line-haul tug failed to notify the CH of the impending movement. Less frequent violations include failure of the escort tug to be certified for escort duties, failure of the escort tug to notify the CH, expired bollard-pull certificates and failure of the tanker pilot to notify the CH. Of the 20 infractions, the number of violations per company ranged from three companies with only one violation each to one company with seven violations.

### **OSPR Enforcement Process**

Due to the increase in violations that occurred in 2004, the Committee raised concerns with OSPR's enforcement procedures and requested that OSPR shorten the amount of time between reported violations and their resolution. In response, OSPR has streamlined its procedures as follows: First, the CH will now report violations directly to the OSPR Legal Branch. Second, the OSPR Legal Branch will immediately notify the company of the reported violation. Depending on the severity of the violation and the history of the violator, either a notice of violation (informal) or an administrative civil penalty complaint (formal) will be sent to the owner and/or operator outlining the specifics of the violation, civil penalty assessed and OSPR's costs for investigation.

OSPR will continue to make periodic reports to the Committee on the status of current violations.

### **Coordination of Enforcement Responsibilities**

The Coast Guard and the Department of Fish and Game coordinate policies and procedures to the greatest extent possible with each other and with other federal, state, and local agencies. Cooperation and coordination between agencies minimizes enforcement efforts required for all federal, state, and local regulations. This cooperation is essential since, relative to the Harbor Safety Plan, the Coast Guard is the primary enforcement agency for federal regulations, and the Department of Fish and Game is the primary enforcement agency for state regulations.